U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami Date: FEB 18 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

Identifying [illegible] prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Peru who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the [redacted] Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of [redacted] and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The district director determined that the applicant was not eligible for adjustment of status as a spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because he had not established that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the applicant's marriage to his spouse is bona fide, and they are ready and willing to be reinterviewed at the Service's convenience and to submit any additional documentation required. Counsel submits additional evidence.

The record reflects that on September 24, 1997 at [redacted], the applicant married a native and citizen of [redacted] whose immigration status was adjusted to that of a lawful permanent resident of the United States pursuant to section 1 of the Cuban Adjustment Act.

At an interview regarding his application for permanent residence on October 6, 1998, the applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing Matter of Laureano, 19 I&N Dec. 2951 (BIA 1983), and Matter of Phillis, 15 I&N Dec. 385 (BIA 1975), the district director determined that the discrepancies encountered at the interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, strongly suggest that the applicant and his spouse have entered into a marriage for the primary purpose of circumventing the immigration

laws of the United States. The director, therefore, denied the application.

On notice of certification, counsel submits:

1. An affidavit from the applicant explaining why eight of his responses to questions given at the interview conflict his wife's responses.

2. Affidavits from the applicant's immediate family, from his wife's immediate family, and from other relatives and friends confirming that they attended the wedding ceremony and reception and that the applicant and his wife are happily married.

3. Numerous photographs of the applicant and his spouse, including photos of the wedding ceremony and reception, including group photos of attendants to the wedding.

4. A letter from the AmTrust Bank indicating that the applicant and his wife have been customers of excellent standing since April 1, 1997; copies of joint bank statements from February 28, 1998 to September 30, 1998; and copies of cancelled checks showing joint account.

5. 1997 joint income tax return; joint credit cards, health insurance, and automobile insurance; envelopes addressed to the applicant and his spouse at their residence.

The applicant's explanation regarding the basis of the contradictory testimony given at the interview, and the evidence furnished to establish that the applicant's marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States, appear credible.

As the only ground of ineligibility present in this case has now been overcome, it is, therefore, concluded the applicant has established he is in fact eligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966, and warrants a favorable exercise of discretion. Accordingly, the district director's decision will be withdrawn and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.